

Message Text

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ACTION L-02

INFO OCT-01 EUR-12 ISO-00 JUSE-00 SCA-01 SSO-00 /016 W

----- 123368

O 121147Z FEB 75

FM AMEMBASSY LONDON

TO SECSTATE WASHDC IMMEDIATE 8184

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E.O. 11652:N/A

TAGS: CPRS, PFOR, SNAR, UK

SUBJECT: EXTRADITION: PETER DALY

REF: STATE 27434

FOLLOWING ADVICE RECEIVED FROM DPP CONCERNING QUESTIONS
RAISED IN PARAGRAPH 2 REFTEL:

"IT IS EXTREMELY DOUBTFUL WHETHER, EVEN IF PROPERLY CERTIFIED, A TRANSCRIPT OF EVIDENCE GIVEN IN OTHER PROCEEDINGS WOULD BE ADMISSIBLE AGAINST DALY IN ENGLISH COURTS. SECTION 14 OF THE EXTRADITION ACT 1870 PROVIDES AS FOLLOWS: "DEPOSITIONS OR STATEMENTS ON OATH TAKEN IN A FOREIGN STATE AND COPIES OF SUCH ORIGINAL DEPOSITIONS OR STATEMENTS AND FOREIGN CERTIFICATES OR JUDICIAL DOCUMENTS STATING THE FACT OF CONVICTION MAY, IF DULY AUTHENTICATED BE RECEIVED IN EVIDENCE IN PROCEEDINGS.

SECTION 15 OF THE ACT PROVIDES THAT FOREIGN WARRANTS AND DEPOSITIONS OR STATEMENTS ON OATH AND COPIES THEREOF AND CERTIFICATES OF OR JUDICIAL DOCUMENTS STATING THE FACT OF A CONVICTION SHALL BE DEEMED DULY AUTHENTICATED FOR THE PURPOSE OF THIS ACT IF AUTHENTICATED IN A MANNER PROVIDED FOR THE TIME BEING BY LAW OR AUTHENTICATED AS FOLLOWS:

(1) IF THE WARRANT PURPORTS TO BE SIGNED BY A JUDGE, MAGISTRATE OR OFFICER OF THE FOREIGN STATE WHERE SAME WAS ISSUED; (2) IF THE DEPOSITIONS OR STATEMENTS OR COPIES THEREOF PURPORT TO BE CERTIFIED BY THE JUDGE, MAGISTRATE OR OFFICER OF THE FOREIGN STATE WHERE THE SAME WERE TAKEN TO BE ORIGINAL DEPOSITIONS OR STATEMENTS OR TO BE TRUE

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COPIES THEREOF, AS THE CASE MAY REQUIRE; AND (3) IF THE

CERTIFICATE OR JUDICIAL DOCUMENT NOT STATING THE FACT OF CONVICTION PURPORTS TO BE CERTIFIED BY A JUDGE, MAGISTRATE OR OFFICER OF THE FOREIGN STATE WHERE THE CONVICTION TOOK PLACE; AND IF IN EVERY CASE THE WARRANTS, DEPOSITIONS, STATEMENTS, COPIES, CERTIFICATES AND JUDICIAL DOCUMENTS (AS THE CASE MAY BE) ARE AUTHENTICATED BY THE OATH OF SOME WITNESS OR BY BEING SEALED WITH THE OFFICIAL SEAL OF THE MINISTER OF JUSTICE OR SOME OTHER MINISTER OF STATE: AND ALL COURTS OF JUSTICE, JUSTICES AND MAGISTRATES SHALL TAKE JUDICIAL NOTICE OF SUCH OFFICIAL SEAL AND SHALL DEEM THE DOCUMENTS SO AUTHENTICATED BY THEM TO BE RECEIVED IN EVIDENCE WITHOUT FURTHER PROOF.

THE DOUBT ARISES FROM THE FACT THAT IN ENGLISH LAW BOTH A DEPOSITION AND STATEMENT OF OATH ARE WRITTEN STATEMENTS SIGNED BY THE WITNESS HIMSELF AND CERTIFIED AT THE TIME BY A JUDICIAL OFFICER BEFORE THEY WERE SWORN ALTHOUGH IT IS POSSIBLE THAT OUR COURTS WOULD REGARD SUCH A TRANSCRIPT OF EVIDENCE AS "A WRITTEN STATEMENT". WE ARE VERY APPREHENSIVE THAT AN OBJECTION THAT IT IS NOT WITHIN THE PROVISIONS OF SECTIONS 14 AND 15 OF THE 1870 ACT WOULD BE UPHOLD. SUCH A RULING WOULD BE VITAL TO THE CASE AND THEREFORE WE WOULD PREFER TO BE ON COMPLETELY FIRM GROUND BY HAVING EVIDENCE IN THE FORM OF AFFIDAVITS SIMILAR TO THOSE PROVIDED IN THIS CASE BY MR. GIULIANI, THE ASSISTANT US ATTORNEY.

IF, HOWEVER, IT IS FOUND IMPOSSIBLE TO OBTAIN SUCH AFFIDAVITS THE TRANSCRIPT, IF WE ARE TO HAVE ANY HOPE AT ALL OF GETTING IT IN EVIDENCE, MUST BE CERTIFIED BY THE SHORTHAND WRITER WHO MADE IT AND IF AT ALL POSSIBLE BY THE JUDGE WHO PRESIDED OR BY THE CLERK OF THE COURT. THESE PERSONS SHOULD CERTIFY IN TERMS THAT THE DOCUMENT PRODUCED IS A TRUE AND ACCURATE COPY OF THE RECORD OF EVIDENCE GIVEN ON OATH BY THE NAMED WITNESSES ON THE DATES IN QUESTION BEFORE THE NAMED (DESCRIPTION) COURT. IT WOULD ALSO BE OF ASSISTANCE IF THE SHORTHAND WRITER IN CERTIFYING THE DOCUMENTS COULD STATE, IF IT BE THE CASE, THAT HE IS AN OFFICER OF THE COURT."

"IT IS NECESSARY IN ENGLISH LAW IN ORDER TO SECURE A LIMITED OFFICIAL USE

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COMMITTAL FOR TRIAL TO ESTABLISH A PRIMA FACIE CASE; THAT IS TO SAY SUCH EVIDENCE AS WOULD IF UNCONTRADICTED ALLOW A JURY, PROPERLY INSTRUCTED, TO CONVICT. IN VIEW OF DIRECTOR, EVIDENCE PRESENTLY AVAILABLE IS NOT (REPEAT NOT) SUFFICIENT TO ESTABLISH SUCH A PRIMA FACIE CASE" WITH REGARD TO SUBJECT.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION, DOCUMENTS, COURTS
Control Number: n/a
Copy: SINGLE
Draft Date: 12 FEB 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: greeneet
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975LONDON02178
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750050-0908
From: LONDON
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750251/aaaabtdu.tel
Line Count: 115
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 STATE 27434
Review Action: RELEASED, APPROVED
Review Authority: greeneet
Review Comment: n/a
Review Content Flags:
Review Date: 26 JUN 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <26 JUN 2003 by ShawDG>; APPROVED <03 NOV 2003 by greeneet>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EXTRADITION: PETER DALY
TAGS: CPRS, PFOR, SNAR, UK, (DALY, PETER)
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006